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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,891	02/02/2001	Eric A. Baldwin	04608.00002	8122

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EXAMINER

FERKO, KATHRYN P

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/775,891

Applicant(s)

BALDWIN ET AL.

Examiner

Kathryn Ferko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 18,34,36 and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17,19-33,35 and 38-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-41 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Amendment***

This is a response to the amendment dated June 6, 2003. Claims 1-41 are pending where 18, 34, 36 and 37 have been withdrawn from consideration.

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1, 16, 32 and 38 have been considered but are moot in view of the new ground(s) of rejection.
2. Applicant's arguments regarding claims 12-15, 28-33 and 35 have been fully considered but they are not persuasive.

Applicant argues that the crimping method of Dall et al. is not equivalent to that of the instant invention. However, applicant has failed to establish the criticality to the crimping method of the instant invention. In fact, page 11 of the specification states, "The particulars of the cable mechanism are generally known in the art and disclosed in U.S. Patent No. 5,415,658." Therefore, the function of securing the cables is accomplished in the Dall et al. reference as well as the instant application. Therefore, the crimping of Dall et al. can be considered an equivalent way of securing the cables. To arrange the crimping method in the claimed invention or any other operable fashion for the purpose of securing cables would have been obvious to one with ordinary skill in the art.

Furthermore, driver slots and drivers are well known to those with ordinary skill in the art (see the additionally cited references for a few examples).

Therefore, it would be obvious to one with ordinary skill in the art to modify the invention to include such features.

***Specification***

3. The disclosure is objected to because of the following informalities: page 10 makes reference to a figure 5 when it should reference either figure 5A or 5B.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-17, 19-33, 35 and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dall et al. in US Patent No. 5,665,089 in view of Judet et al. in US Patent No. 5,591,168.

With regard to claims 1-11, Dall et al. disclose an apparatus having a connector (36b) with a superior end and an inferior end, at least a lateral side, a medial side opposite the lateral side, an anterior, and a posterior side opposing the anterior side, as seen in figure 9; at least one claw (90) at the superior end; at least one cable aperture (48) or surface groove along the connector extending from one side to another side of the connector, as recited in column 4, lines 40-45; at least one bone screw slot (44) along the connector extending from the lateral side to the medial side, as recited in column 4, lines 3-28 and seen in

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figure 9; a superior end with a first transition portion that is detachable from a second transition portion of the inferior end, as recited in column 5, lines 5-12 and seen in figure 9; an inferior end that is bowed or rotated to more properly align with a bone of a body, as recited in column 3, lines 65-67; a connector that includes a transition portion between the inferior end and the superior end to allow bending of the connector to more properly align with a bone of a body, as stated in column 5, lines 10-12 and seen in figure 10 (wherein most material can be bent to conform to the shape of a bone); a bone screw slot (44) that is located along the inferior end, as seen in figure 9; a bone screw slot that is a compression type slot, as seen in figures 9 and 10; at least one bone screw (38, 58 and/or 68) that is engageable within the bone screw slot and within a bone of a body, as seen in figure 2; a bone screw slot that is configured to angle a bone screw when it is inserted into the bone screw slot to avoid a prosthesis in a body, within the scope given the structure; a superior end that includes a cable aperture (wherein the connection portion where 36b and 90 meet there are cable apertures as seen in figure 10, therefore considered part of the superior end); a cable aperture that is angled or on a curved path relative to the anterior and posterior sides of the superior end, as recited in column 4, lines 15-25 (also any degree even 90 degrees can be considered an angle); and a cable (64) insertable within the cable aperture, as seen in figures 9 and 10.

Regarding claims 16-17 and 19-27, Dall et al. disclose an apparatus having a connector (36b) having a superior end and an inferior end, a lateral

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side, a medial side opposite the lateral side, an anterior side, and a posterior side opposing the anterior side; at least one cable aperture (48) along the connector, as seen in figures 9 and 10; at least one cable aperture (48) or surface groove along the superior end (wherein the connection portion where 36b and 90 meet there are cable apertures as seen in figure 10, therefore considered part of the superior end); at least one claw member (90) at the superior end, as seen in figure 9; a superior end with a first transition portion that is detachable from a second transition portion of the inferior end, as recited in column 5, lines 6-13 and seen in figures 9 and 10; an inferior end that is bowed or rotated to more properly align with a bone of a body, as recited in column 3, lines 65-67; a transition portion between the inferior end and the superior end to allow bending of the connector to more properly align with a bone of a body (wherein most material can be bent to conform to the shape of a bone); at least one bone screw slot (44) along the connector extending from the lateral side to the medial side, as seen in figures 2 and 9; a bone screw slot that is located along the inferior end, as seen in figure 9; a bone screw slot that is a compression type slot, as seen in figures 9 and 10; at least one bone screw (38, 58, and/or 68) engageable within the bone screw slot (44) and within a bone of a body, as recited in column 4, lines 5-29; a bone screw slot (44) that is configured to angle a bone screw when it is inserted into the bone screw slot to avoid a prosthesis in a body, within the scope given the structure; a cable aperture (48) that is angled relative to a lateral side of the superior end, as stated in column 4, lines 15-20 (also any

degree even 90 degrees can be considered an angle), and a cable (64) that is insertable within the cable aperture, as seen in figure 9.

With regard to claims 38-41, Dall et al. disclose a connector (36b) having a superior end with a first portion; an inferior end with a second portion (90) that is detachable mated to the first portion of the superior end, the inferior end having at least a lateral side, a medial side opposite the lateral side, an anterior, and a posterior side opposing the anterior side, as seen in figures 9 and 10; at least one claw (90) at the superior end, as seen in figure 9; at least one cable aperture (48) or surface groove along the connector extending from one side to another side of the connector, as seen in figure 9; at least one bone screw slot (44) along the connector extending from the lateral side to the medial side, as seen in figure 2; and an inferior end and a superior end that are mated by at least one bone screw, as seen in figure 9.

Dall et al. disclose the invention as claimed with the exception of a claw having at least one extension hook; at least one cable screw slot along the connector extending from the lateral side to the cable aperture; at least one cable screw each engageable with the respective cable screw slot and capable of crimping within the cable aperture; a driver slot along the lateral side of the superior end; and a driver engageable with the driver slot.

On the other hand, Judet et al. teach a device for a femur having a claw with at least one extension hook, as seen in figures 4 and 5. Therefore, it would be obvious to one with ordinary skill in the art to modify the invention of Dall et al.

to provide a claw with at least one extension hook for the purpose of better grasping the greater trochanter.

Further, Dall et al. also teach to crimp the cable, in column 4. Therefore, the crimping method of Dall et al. can be considered an equivalent method for securing the cables. Therefore, to arrange the crimping in the claimed configuration or any other operable fashion for the purpose of securing the cables would have been obvious to one with ordinary skill in the art.

Furthermore, it would also be obvious to one with ordinary skill in the art to further provide a driver slot along the lateral side of the superior end and a driver engageable with the driver slot for the purpose of better enabling the driver.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are as follows: US Patent No. 6,183,474 and US Patent No. 4,465,065.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Ferko whose telephone number is (703) 306-3454. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (703) 308-0101. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

KF  
June 30, 2003



Henry Bennett  
Supervisor Patent Examiner  
Group 3700